

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2006

CORAM

THE HON'BLE MR. JUSTICE P. JYOTHIMANI

W.P.No.34953/2006

K.Gopalan

.. Petitioner

vs

- 1.The Indian Overseas Bank,
Nesapakkam Branch,
Chennai 600078.
- 2.The Authorised Officer,
Indian Overseas Bank,
Asset Recovery Management Branch,
763, Anna Salai, Chennai 600 002.
- 3.The Commissioner of Police,
Egmore, Chennai 600 008.
- 4.The Central Bureau of Investigation,
Rajaji Bhavan, Besant Nagar, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 2nd respondent in the impugned order ARMB/164 dated 24.08.2006 and quash the same.

For Petitioner ... Mr.C.Hanumantha Rao
For Respondents ... Mr.F.B.Benjamin George for R1

ORDER

This writ petition is filed challenging the order of the 2nd respondent dated 24.8.2006 under which the 2nd respondent, the Authorised Officer of Indian Overseas Bank has issued a tender-cum-auction notice purported to be issued under section 13(4)(1) of the SARFAESI Act, 2002 along with Rule 8 and 9 of the Security Interest (Enforcement) Rules, 2002. As per the said impugned order for the recovery of the amount of Rs.97,90,137/-, the property of the petitioner is sought to be sold by a public auction on 28.09.2006. It is challenging the said notice, the present writ petition is filed.

2. Even though the petitioner has raised as many objections regarding the validity or the otherwise of the said notice and also disputing the said borrowal by the petitioner himself, it is to be noted that the matter has already been decided by the Debts Recovery Tribunal also and it is too late for the petitioner now to say as if he has not borrowed the amount. In any event, this notice is issued under section 13(4)(1) of the SARFAESI Act against which the appeal lies under section 17 of the Act before the Debts Recovery Tribunal, the procedure contemplated under the said provisions is that for the notice issued under section 13(4)(1) of the SARFAESI Act, the objections can be given by the borrower and after the objection is not taken into consideration, it is always open to the petitioner to move the Tribunal under section 17 of the Act by way of an appeal.

3. The contention of the learned counsel for the petitioner as if for the purpose of moving an appeal under section 17 of the Act, he has to deposit the amount, cannot be the reason for the purpose of invoking the jurisdiction under Article 226 of the Constitution of India.

4. In as much as the appeal under section 17 of the SARFAESI Act is available as an alternative remedy, the writ petition fails and the same is dismissed on the ground of availability of alternative remedy, making it clear that it is open to the petitioner to raise his objections in respect of the impugned notice issued under section 13(4)(1) of SARFAESI Act. It is also open to the petitioner to move necessary application for stay in order to protect the interest of his property which is sought to be sold by way of public auction.

5. It is also open to the petitioner to move the Tribunal by filing an appeal within a period of fifteen days from the date of receipt of a copy of this order. Giving liberty to the petitioner to file an appeal under section 17 of the Act, this writ petition is dismissed.

6. It is also made clear that in the event of petitioner filing such appeal, it is open to the Tribunal to consider all the contentions which are raised in this writ petition including passing of the interim order in respect of saving the property of the petitioner which is ought to be sold in a public auction as stated in the impugned notice. This order is passed relying upon the Judgment of the Division Bench of this Court in W.P.No.44091/2002 etc., batch, dated 14.06.2004.

7. The writ petition is dismissed with the above observation. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ap

To

- 1.The Indian Overseas Bank,
Nesapakkam Branch,
Chennai 600078.
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 - 3.The Commissioner of Police,
Egmore, Chennai 600 008.
 - 4.The Central Bureau of Investigation,
Rajaji Bhavan, Besant Nagar, Chennai.
- 1 cc To Mr.C.Hemantha Rao, Advocate, SR.45964.
1 cc To Mr.F.B.Benjamin George, Advocate, SR.45900.
1 cc To The Government Pleader, SR.46138.

W.P.No.34953/2006

MS(CO)
RVL 12.10.2006

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